

AGREEMENT

The parties to this agreement, the Maricopa County Community College District (the District) and Dr. Cleopatria Martinez (Dr. Martinez) hereby stipulate and agree as follows:

- On November 17, 2010 an administrative evaluation team reported that Dr. Martinez's course materials violated copyright, and that she had insubordinately evaded efforts to supervise her use of copy privileges (the letter is attached as exhibit A).
- As a result, on December 9, 2010 the undersigned President Anna Solley prohibited Dr. Martinez from copying any course materials of Dr. Martinez's own creation (the letter is attached as exhibit B).
- Dr. Martinez has pursued various grievances and complaints in an effort to be free of restriction and supervision in the creation and use of course materials, including charges of unlawful discrimination and retaliation to the United States Equal Employment Opportunity Commission. This includes but is not limited to charge number 540-2010-02919 (the complaints).
- The parties now desire to resolve all the above issues between them amicably by this agreement and to forego all other remedies they may have concerning the above described matters.

In consideration of the mutual promises contained in this agreement, the parties voluntarily agree as follows:

1. The District hereby rescinds exhibit B.
2. Dr. Martinez agrees:
 - to make copies of the course materials she distributes to students at her own expense, without using District owned copy equipment
 - to waive for all time all her rights to indemnification and defense by the District against claims of other authors and publishers that her "class notes," course materials, or other use of their materials violate copyright; and
 - to indemnify and hold harmless the District against any and all claims of other authors and publishers that her "class notes," course materials, or other publications violate copyright; and
 - not to sue, grieve, or otherwise seek to overturn or invalidate this agreement through any internal or external complaint process; and
 - to waive all personal claims and causes of action of any kind for damages or other relief in connection with this agreement, exhibits A and B, and the facts alleged in the complaints.
3. The parties understand and agree that the Department of Justice of the United States has the authority to enforce the civil rights laws of the United States, and this agreement has no effect on that authority.

Signed this ____ day of September, 2011

MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

by Anna Solley, Ed.D., President, Phoenix College

Cleopatria Martinez, Ph.D.



COPY

November 17, 2010

Dr. Anna Solley
Phoenix College President
1202 W. Thomas Road
Phoenix, AZ 85103

Dr. Solley,

We have completed the Administrative Evaluation per your request and in compliance with 3.7 of the RFP. The four areas identified in the evaluation are copyright violation, plagiarism, abuse of department resources and insubordination. Our evaluation consisted of the review of extensive documents and interviews with legal counsel, college administrators, faculty and staff.

The following summarizes our evaluation:

1. Copyright and plagiarism. We have confirmed that Dr. Martinez was notified in writing and in face to face meetings, of the college and district concerns regarding her materials as copyright law violation. Notifications were made by the Phoenix College President, three Phoenix College Vice Presidents, and the Mathematics Department Chair. Maricopa County Community College District (MCCCD) Legal Counsel communicated their concerns regarding her materials and expressed that the materials violated fair use and were at risk of copyright and plagiarism violations.

A letter from Lewis and Roca, dated October 28, 2010 was reviewed by the evaluation team. Lewis and Roca confirmed the findings of the MCCCD Legal Counsel and concluded:

"In order to avoid the risk of copyright infringement, Phoenix College should not allow Dr. Martinez's Course Materials to be distributed or used, and Phoenix College should immediately remove the Basic Arithmetic Course from its website."

2. Abuse of department resources. The evaluation team has not found clear evidence that there was abuse of the department resources. The Mathematics Department has no process regarding binding requests or the establishment of a copy limit per faculty member in the department. An incident regarding the use of the department laser printer was explained by

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Dr. Martinez as a human error and mistake on her part. She indicated that her intention was to print one copy rather than the sixteen produced. It should be noted that the copies that were printed were the same materials of concern regarding copyright violation.

3. Insubordination. Dr. Martinez failed to follow Dr. Solley's and MCCCCD Legal Counsel instruction and continued to request copies of materials determined to be in violation by legal counsel. This includes her request of a Mathematics Adjunct Faculty to make copies of class materials on her behalf.

Specifically, Dr. Martinez ignored the April 2, 2010 written communication by Dr. Anna Solley, President of Phoenix College and continued to request and persist in printing or copying unauthorized materials:

"You are reminded that Section 4 of Administrative Regulation 3.2, quoted above, clearly advises that the Governing Board prohibits and disapproves of unauthorized duplication in any form. Section 5 of the Regulation further advises that employees who will fully disregard this Board policy and/or the aforementioned copyright guidelines do so at their own risk and assume all liability for their actions.

You are finally admonished that any further copyright/fair use violations will lead to disciplinary action being taken against you, up to and including termination of your employment."

The administrative evaluation team agrees that the administration should take appropriate disciplinary action following district policies in regards to this matter.

Sincerely,



Cassandra Kakar
Vice President
Academic Affairs



Mark Rosati
Department Chair
Biosciences



Cindy Cloud
Department Chair
Business

Attached:

April 2, 2010 Letter from Dr. Solley
October 28, 2010 Letter from Lewis and Roca